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12
13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
15

16 Eat Strong, LLC, a Utah company,

17 Plaintiff,

18 v.

19 Palomino Trade, LLC, a California
20 company,

21 Defendant.

Case No. 5:23-cv-2041

COMPLAINT FOR DAMAGES

1. Trademark Infringement
15 U.S.C. § 1114
2. False Designation of Origin
15 U.S.C. § 1125(a)
3. Unlawful, Unfair, Fraudulent
Business Practices California Bus.
Code § 17200 et seq.
4. Unfair Competition Common Law

DEMAND FOR JURY TRIAL

1 Plaintiff Eat Strong, LLC, through its counsel, hereby complains of Defendant
2 Palomino Trade, LLC and for a cause of actions states as follows:

3
4 **PARTIES**

5 1. Plaintiff Eat Strong, LLC is a Utah limited liability company having its
6 principle place of business at 12259 S 450 E, Suite B, Draper, Utah 84020.

7 2. Palomino Trade is a California limited liability company having its
8 principle place of business at 540 Hidden Valley Parkway, Suite 101, Corona,
9 California 92879.

10
11 **JURISDICTION AND VENUE**

12 3. This action arises under the trademark and unfair competition laws of the
13 United States. 15 U.S.C. §1051 et seq.

14 4. This Court has original jurisdiction over the subject matter of this action
15 pursuant to 15 U.S.C. §1121(a) and 28 U.S.C. §§1331 (federal question), 1338(a) (any
16 Act of Congress relating to patents or trademarks), and 1338(b) (any action asserting
17 claim of unfair competition joined with a substantial and related claim under the
18 trademark law) for the claims arising out of the violations of Sections 32(1)(a) and
19 43(a) and (c) of the Lanham Act.

20 5. This Court has supplemental jurisdiction over the pendent state and
21 common law claims arising from the same nucleus of operative facts pursuant to 28
22 U.S.C. §1367(a).

23 6. This Court has personal jurisdiction over the defendant because its
24 principal place of business is located within this District.

25 7. Venue is proper in this District under 28 U.S.C. §1391(b)(2) because a
26 substantial part of the events giving rise to the claims occurred in this District.

GENERAL ALLEGATION

Plaintiff's Trademarks

8. Plaintiff Eat Strong, LLC owns and operates a restaurant called Fueled Fresh Kitchen, located at 12259 S 450 E, Suite B, Draper, Utah 84020 (hereinafter the "Fueled Restaurant").

9. Although there is currently just one Fueled Restaurant, Plaintiff has plans to expand nationwide by selling franchises.

10. The Fueled Restaurant has a reputation for high quality restaurant services by offering excellent food, unsurpassed customer service, and affordable prices in a family-friendly environment.

11. To protect its brand, Eat Strong obtained U.S. Federal Trademark Registration No. 5789701, filed on August 28, 2018, for the mark FUELED FRESH KITCHEN in International Class 043 for restaurant services (the "Trademark").

12. Plaintiff advertises nationwide for its Fueled Restaurant services using the Trademark. Examples of Plaintiff's use of the Trademark include the following:

BREAKFAST
SERVED ALL DAY

PROTEIN SHAKES
Substitute Vegan Protein in any shake for 1
Add additional scoop of Protein for 2

BREAKFAST BURRITO 11.99
CAL 225 (PROTEIN 31) CARB 33 (FAT 10)
Egg whites, Turkey Sausage, Cheddar Cheese, Black Bean Salsa, Avocado, Whole Wheat Tortilla. Served with seasonal fruit.

STEAK & EGG BURRITO 13.99
CAL 300 (PROTEIN 31) CARB 40 (FAT 10)
Egg whites, Grilled Steak, Cheddar Cheese, Avocado, Whole Wheat Tortilla. Served with seasonal fruit.

BREAKFAST HASH 11.99
CAL 180 (PROTEIN 31) CARB 30 (FAT 10)
Egg whites, Turkey Sausage, Sweet Potato Wedges, Red Onion, Celery, Red Bell Pepper.

BREAKFAST SANDWICH 7.99
w/ Bacon CAL 300 (PROTEIN 31) CARB 35 (FAT 11)
w/ Sausage CAL 300 (PROTEIN 31) CARB 35 (FAT 11)
Choice of Turkey Sausage or Canadian Turkey Bacon with Egg whites, Cheddar Cheese on an English Muffin. Served with seasonal fruit.

DRAPER OMELET 9.99
CAL 210 (PROTEIN 31) CARB 15 (FAT 10)
Egg Whites, Canadian Turkey Bacon, Shredded Cheddar Cheese, Red Onion, Red Bell Pepper. Served with seasonal fruit.

VEGGIE OMELET 9.99
CAL 250 (PROTEIN 31) CARB 15 (FAT 11)
Egg whites, Mushroom, Broccoli, Spinach, Red Onion, Red Bell Pepper, Avocado. Served with seasonal fruit.

PROTEIN OMELET 10.99
CAL 300 (PROTEIN 31) CARB 15 (FAT 11)
Egg whites, Turkey Sausage, Red Onion, Tortilla, Topped with Cottage Cheese and Cilantro. Served with seasonal fruit.

GREEK YOGURT 7.49
CAL 150 (PROTEIN 25) CARB 40 (FAT 7)
Greek yogurt, Strawberries, Banana, Granola, Drizzled with honey.

OATMEAL 5.99
CAL 300 (PROTEIN 11) CARB 42 (FAT 12) (W - V)
Oatmeal, Strawberries, Blueberries, Sliced Almonds, Topped with Chia Seeds.

FUELED BEAST 7.99
CAL 312 (PROTEIN 40) CARB 30 (FAT 16) (W - V)
Vanilla Whey Protein, Almond Milk, Almond Butter, Cocoa, Banana, Pineapple.

ISLAND BREEZE 7.99
CAL 400 (PROTEIN 32) CARB 47 (FAT 12) (W - V)
Vanilla Whey Protein, Coconut Milk, Pineapple Juice, Froyo, Banana, Pineapple.

CHOCOLATE PB LOVE 7.99
CAL 410 (PROTEIN 40) CARB 44 (FAT 10) (W - V)
Chocolate Whey Protein, Almond Milk, Powdered Peanut Butter, Froyo, Banana.

PB VACATION 7.99
CAL 400 (PROTEIN 40) CARB 41 (FAT 9) (W - V)
Vanilla Whey Protein, Almond Milk, Powdered Peanut Butter, Froyo, Banana.

YODA 7.99
CAL 300 (PROTEIN 30) CARB 26 (FAT 16) (W - V)
Vanilla Whey Protein, Coconut Milk, Almond Butter, Banana, Cinnamon, Date, Spinach.

APPLE PIE 7.99
CAL 400 (PROTEIN 32) CARB 44 (FAT 11) (W - V)
Vanilla Whey Protein, Apple Juice, Froyo, Cinnamon, Banana, St. Carmel Sauce, Almond Butter.

JUDD 8.49
CAL 420 (PROTEIN 37) CARB 38 (FAT 21) (W - V)
Chocolate Vegan Protein, Almond Milk, Almond Butter, Coconut, Banana, Sugar Free Dark Chocolate.

SWEET GREENS 7.99
CAL 200 (PROTEIN 41) CARB 46 (FAT 2) (W - V)
Apple Juice, Banana, Pineapple, Spinach, Kale, and Chia Seeds.

STRAWBERRY CHEESECAKE 7.99
CAL 410 (PROTEIN 30) CARB 40 (FAT 11)
Vanilla Whey Protein, Strawberry Juice, Froyo, Granola, Strawberries, Sugar Free White Chocolate.

PB&J 7.99
CAL 410 (PROTEIN 40) CARB 41 (FAT 9) (W - V)
Vanilla Whey Protein, Skin Milk, Powdered Peanut Butter, Oatmeal, Banana, Strawberries, Froyo.

COOKIE BUTTER 7.99
CAL 400 (PROTEIN 32) CARB 40 (FAT 10) (W - V)
Vanilla Whey Protein, Almond Butter, Almond milk, Honey, Dark Chocolate Chips, Coconut Flakes, Oats, Sea Salt, Dates.

FREAK 8.99
CAL 440 (PROTEIN 38) CARB 37 (FAT 26) (W - V)
Double Scoop of Chocolate Whey Protein, Almond Milk, Powdered Peanut Butter, Dark Chocolate Chips, Coconut, Banana.

PROTEIN PANCAKES
SERVED ALL DAY

FUELED STACK 11.99
CAL 540 (PROTEIN 40) CARB 50 (FAT 10)
Multi Grain Protein Pancakes - Topped with Blueberries, Strawberries and Banana.

PB&J 11.99
CAL 540 (PROTEIN 41) CARB 50 (FAT 10)
Multi Grain Protein Pancakes - Topped with Peanut Butter, Banana, Redwood Sugar Strawberry Jam and drizzled with PB2.

CHOCOLATE DIPPED 11.99
CAL 620 (PROTEIN 30) CARB 60 (FAT 11)
Multi Grain Protein Pancakes with Dark Chocolate Chips - Topped with Strawberries and Chocolate Protein Glaze.

GLUTEN FREE 11.99
CAL 392 (PROTEIN 42) CARB 42 (FAT 6) (W)
House Gluten Free Pancake Mix - Topped with Strawberries.

FROYO LOVERS 11.99
CAL 320 (PROTEIN 40) CARB 120 (FAT 11)
Multi Grain Protein Pancakes - Topped with Vanilla Froyo and Chocolate Protein Glaze.

BLUEBERRY LEMON 11.99
CAL 420 (PROTEIN 30) CARB 50 (FAT 11)
Multi Grain Protein Pancakes with Blueberries and Lemon Zest - Topped with White Chocolate Protein Glaze and Blueberries.

CARAMEL MACCHIATO
16oz 3.99 - 24oz 5.99
Espresso, Caramel, Vanilla.

MILKY WAY
16oz 3.99 - 24oz 5.99
Espresso, Hazelnut, Chocolate, Caramel.

COOKIES & CREAM
16oz 3.99 - 24oz 5.99
Espresso, White Chocolate, Vanilla, Chocolate.

MOCHA LATTE
16oz 3.99 - 24oz 5.99
Espresso, Chocolate.

VANILLA LATTE
16oz 3.99 - 24oz 5.99
Espresso, Vanilla.

CARAMEL FRAPPE
16oz 3.99 - 24oz 8.49
Espresso, Caramel, Vanilla.

MOCHA FRAPPE
16oz 3.99 - 24oz 8.49
Espresso, White Chocolate, Vanilla, Chocolate.

VANILLA FRAPPE
16oz 3.99 - 24oz 8.49
Espresso, Vanilla, Almond Milk, Vanilla Whey Protein, Double Espresso Shot, Sugar Free Frappe, Chocolate.

FRESH JUICES

HD GREENS / 24oz 7.99 (W - V)
"Blended" Ginger, Water, Spinach, Kale, Lime, Mint, Cucumber, Stevia, Ice.

BEETS DON'T KALE MY VIBE / 16oz 7.99 (W - V)
Apple, Carrot, Beet, Kale, Lemon, Celery.

CHICA / 16oz 7.99 (W - V)
Ginger, Spinach, Lime, Cucumber, Parsley, Apple, Agave.

DETOXIFY / 16oz 7.99 (W - V)
Spinach, Cucumber, Apple, Carrot, Beet, Pineapple, Kale.

GING & JUICE / 16oz 7.99
Apple, Carrot, Beet, Water, Ginger, Orange, Cinnamon, Peppercorn.

STELLA / 16oz 7.99 (W - V)
Apple, Cucumber, Strawberry, Orange.

DOCTOR'S ORDERS SHOT / 4oz 3.99
Lemon, Kale, Apple.

FIRELY SHOT / 4oz 3.99 (W - V)
Orange, Apple Cider Vinegar, Turmeric, Black Pepper, Ginger, Honey.

FUELED FRESH KITCHEN
ORDER ONLINE
@FUELEDKITCHEN
801-601-1238
12259 S 450 E SUITE B | DRAPER, UT 84020



13. Plaintiff also provides a meal preparation service for ready-made-meals using a meal prep order form bearing the FUELED FRESH KITCHEN logo. See Exhibit A.

14. Plaintiff has been using the Trademark to provide restaurant services in the United States since at least as early as November 27, 2018.

15. The Trademark mark serves as a source-identifier for genuine Fueled Restaurant services and is used in or on all restaurant services offered by Plaintiff in the United States.

16. Plaintiff Eat Strong LLC has invested significant time, energy, and money advertising, promoting, and selling restaurant services featuring the Trademark, as well as ensuring the high quality of the services it provides which bear the Trademark. These efforts have resulted in widespread and favorable public acceptance and recognition of the Trademark.

Defendant's Infringing Activity

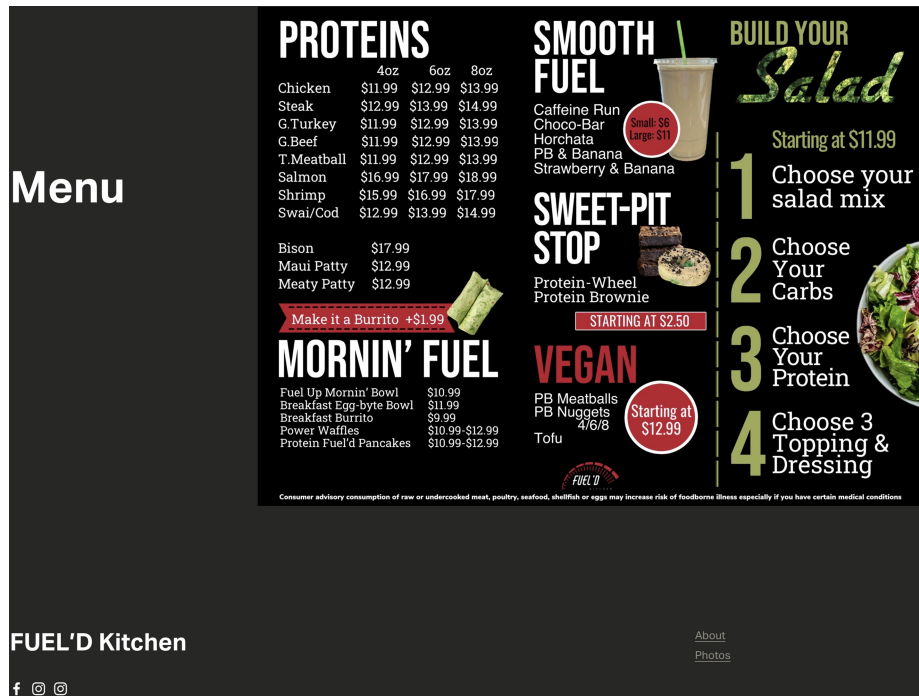
17. Defendant Palomino Trade, LLC has promoted, offered for sale, and/or sold restaurant services under the mark FUEL'D KITCHEN (the "Infringing Mark").

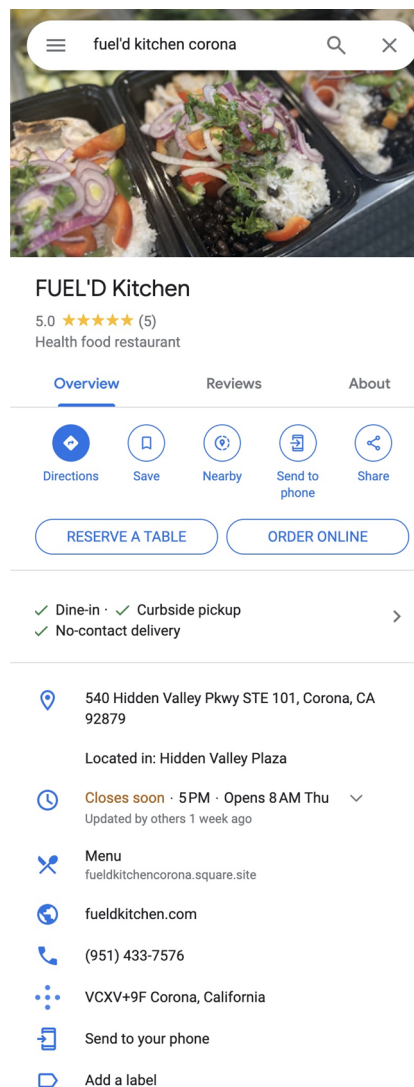
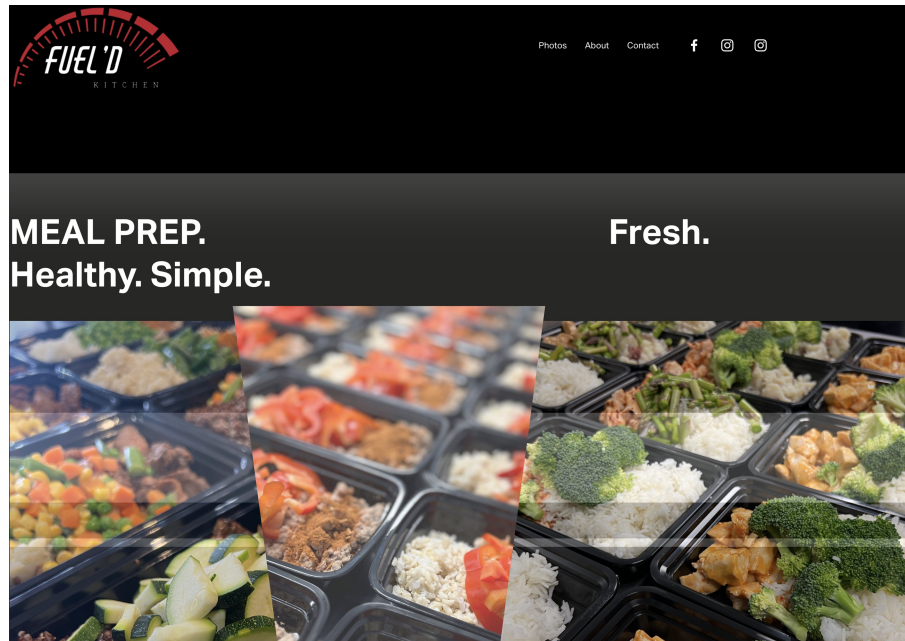
1 18. Recently, Plaintiff discovered that Defendant was marketing, offering
 2 for sale and selling restaurant services featuring the Infringing Mark as well as meal
 3 prep services (collectively, “the Infringing Services”). The Infringing Services were
 4 not approved for sale by Plaintiff.

5 19. Defendant's FUEL'D KITCHEN mark is confusingly similar to
 6 Plaintiff's FUELED FRESH KITCHEN mark.

7 20. Defendant is using the Infringing Mark without license, authority, or
 8 other permission from Eat Strong, LLC.

9 21. The Infringing Services were promoted by Defendant and sold under the
 10 Infringing Mark. Examples of the Infringing Services follow:





1 22. A predominant feature of both the genuine and the infringing restaurant
2 menus and advertising are the words "FUELED" and "FUEL'D" followed by the word
3 "KITCHEN".

4 23. Further, on June 28, 2023, Plaintiff sent a cease-and-desist letter to Fuel'd
5 Kitchen at 540 Hidden Valley Pkwy, Unit 101, Corona, CA 92879 regarding its sale
6 of restaurant services bearing the Infringing Mark.

7 24. Defendant responded to the letter by claiming it did not infringe
8 Plaintiff's rights and has continued to market and sell the Infringing Services, in
9 purposeful disregard of Plaintiff's rights.

10 25. Defendant Palomino Trade sold and continues to sell the Infringing
11 Services despite having actual and specific knowledge of Plaintiff's rights in the
12 FUELED FRESH KITCHEN mark and of Eat Strong's objection to Palomino Trade's
13 sale of products bearing unauthorized copies of the Infringing Mark.

14 26. Palomino Trade's conduct is willful, intentional, and represents a
15 conscious disregard for Plaintiff's rights in the FUELED FRESH KITCHEN mark.
16 Further, the fact that Palomino Trade continued its unlawful conduct by selling the
17 Infringing Services even after receiving Eat Strong's cease-and-desist letters
18 demonstrates Palomino Trade's intent to continue selling Infringing Services without
19 regard for Eat Strong's intellectual property rights.

20 27. Defendant's conduct is likely to cause and, upon information and belief,
21 has caused consumers to believe mistakenly that the Infringing Services are either
22 affiliated with, endorsed by, authorized by, or somehow connected to Plaintiff, or that
23 the Infringing Services sold and promoted by Palomino Trade are genuine Eat Strong
24 services.

25 28. The activities complained of herein have and continue to irreparably
26 harm Plaintiff and dilute the distinctive quality of the FUELED FRESH KITCHEN
27 mark.

FIRST CAUSE OF ACTION

Trademark Infringement – 15 U.S.C. § 1114

29. Plaintiff incorporates the allegations in paragraphs 1 through 28 as though fully set forth herein.

30. Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a), prohibits any person from using in commerce, without the consent of the registrant, any trademark or any reproduction, counterfeit, copy, or colorable imitation thereof in connection with the marketing, advertising, distribution, or sale of goods or services which is likely to result in confusion, mistake, or deception.

31. The FUELED FRESH KITCHEN mark is federally registered.

32. Defendant has used a confusingly similar variation of the FUELED FRESH KITCHEN mark in connection with the Infringing Services without Plaintiff's consent or authorization. Defendant's use, including the sale or offer for sale of the Infringing Services in commerce, is likely to cause confusion and mistake in the mind of the public, leading the public to believe that Defendant's products emanate or originate from Plaintiff, or that Plaintiff has approved, sponsored, or otherwise associated itself with Defendant or its Infringing Services.

33. Through the unauthorized use of the Infringing Mark, Defendant is unfairly benefiting from and misappropriating Plaintiff's goodwill and reputation. This has resulted in substantial and irreparable injury to the public and to Plaintiff.

34. Through Plaintiff's cease and desist letter with Defendant, Defendant has actual and direct knowledge of Plaintiff's prior use and ownership of the FUELED FRESH KITCHEN mark. Defendant's conduct is therefore willful and reflects Defendant's intent to exploit the goodwill associated with the FUELED FRESH KITCHEN mark.

35. Defendant's acts constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

1 among consumers and the public as to the source, origin, sponsorship, or quality of
2 the goods and services of Defendant, thereby causing loss, damage and injury to
3 Plaintiff and to the purchasing public. Defendant's conduct was intended to cause
4 such loss, damage and injury.

5 49. Plaintiff is informed and believes, and on that basis alleges, that
6 Defendant knew or by the exercise of reasonable care should have known that its
7 unauthorized use of the Infringing Mark and Defendant's marketing, advertising,
8 promoting, selling, transporting, distributing, shipping and/or otherwise dealing in
9 products and services bearing the Infringing Mark would cause confusion mistake or
10 deception among purchasers, users and the public.

11 50. Plaintiff is informed and believes, and on that basis alleges, that by
12 Defendant's unauthorized use of the Infringing Mark and Defendant's marketing,
13 advertising, promoting, selling, transporting, distributing, shipping and/or otherwise
14 dealing in products and services bearing the Infringing Mark, Defendant intended to,
15 did, and will continue to induce customers to purchase counterfeit products and
16 services by trading off the extensive goodwill built up by Plaintiff in the FUELED
17 FRESH KITCHEN mark.

18 51. Plaintiff is informed and believes, and on that basis alleges, that the
19 conduct of Defendant has been knowing, deliberate, willful, intended to cause
20 confusion, or to cause mistake or to deceive, and in disregard of Plaintiff's rights.

21 52. Plaintiff is informed and believes, and on that basis alleges, that
22 Defendant's wrongful conduct, as alleged above, has permitted and will permit it to
23 make substantial profits on the strength of Plaintiff's nationwide marketing,
24 advertising, sales and consumer recognition. As a direct and proximate result of
25 Defendant's wrongful conduct, as alleged herein, Plaintiff has been and will be
26 deprived of substantial sales of its products and services in an amount as yet unknown
27 but to be determined at trial, and has been and will be deprived of the value of the
28 FUELED FRESH KITCHEN mark as a commercial asset, in an amount as yet

1 unknown but to be determined at trial. Plaintiff seeks restitution in this matter,
2 including an order granting Defendant's profits stemming from its infringing activity,
3 and Plaintiff's actual and/or compensatory damages.

4 53. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff
5 has no adequate remedy at law for Defendant's continuing violation of its rights set
6 forth above. Plaintiff seeks injunctive relief.

7 54. Plaintiff is entitled to injunctive relief under the California Business and
8 Professions Code § 17200 et seq.

9
10 **FOURTH CAUSE OF ACTION**

11 *Unfair Competition – Common Law Unfair Competition*

12 55. Plaintiff incorporates the allegations in paragraphs 1 through 54 as
13 though fully set forth herein.

14 56. Defendant's actions are an intentional business practice that is unfair,
15 unlawful, and fraudulent and has materially diminished the value of Plaintiff's
16 intellectual property.

17 57. Defendant's actions constitute unfair competition that knowingly and
18 intentionally trades on and misappropriates Plaintiff's goodwill and business
19 reputation for Defendant's enrichment.

20 58. Defendant's unfair competition has caused and will continue to cause
21 damage to Plaintiff and it is causing irreparable harm to Plaintiff for which there is no
22 adequate remedy at law.

23 59. Defendant has been unjustly enriched through its actions and should be
24 disgorged of any unjust gains.

1 WHEREFORE, Plaintiff prays for judgement and injunction against
2 Defendant as follows:

3
4 **PRAYER FOR RELIEF**

5 1. For judgment that Defendant Palomino Trade:

- 6 a. has violated Section 32(1)(a) of the Lanham Act, 15 U.S.C. §
7 1114(1)(a);
8 b. has violated Section 43(a) of the Lanham Act, 15 U.S.C. §
9 1125(a);
10 c. has engaged in unfair competition in violation of California
11 Business and Professions Code § 17200;
12 d. has engaged in common law unfair competition; and
13 e. has engaged in common law unfair competition; and
14 f. that Defendant's activities were in all respects conducted or
15 continued to be conducted willfully and for profit.

16 2. That an injunction be issued enjoining and restraining Defendant
17 Palomino Trade, each of its officers, agents, servants, employees, and attorneys, and
18 all those in active concert or participation with it from:

- 19 a. Using the Trademarks or any other reproduction, counterfeit, copy
20 or colorable imitation of the trademarks on or in connection with
21 any goods or services;
22 b. Engaging in any course of conduct likely to cause confusion,
23 deception or mistake, or to injure Eat Strong's business reputation
24 or dilute the distinctive quality of the Trademark;
25 c. Using any simulation, reproduction, counterfeit, copy, or
26 colorable imitation of the Trademark in connection with the
27 promotion, advertisement, display, sale, offer for sale,
28

1 manufacture, production, importation, circulation, or distribution
2 of any products;

3 d. Making any statement or representation whatsoever, or using any
4 false designation of origin or false description, or performing any
5 act, which can or is likely to lead the trade or public, or individual
6 members thereof, to believe that any services rendered by
7 Defendant are in any manner associated or connected with Eat
8 Strong, or are sold, licensed, sponsored, approved, or authorized
9 by Eat Strong;

10 e. Destroying, altering, removing, or otherwise dealing with the
11 unauthorized products or any books or records which contain any
12 information relating to the, production, distribution, circulation,
13 sale, marketing, offer for sale, advertising, or promotion of all
14 unauthorized services which infringe or dilute the Trademark; and

15 f. Effecting assignments or transfers, forming new entities or
16 associations, or utilizing any other device for the purpose of
17 circumventing or otherwise avoiding the prohibitions set forth in
18 subparagraphs (i) through (v).

19 3. For the entry of an order directing Defendant Palomino Trade to deliver
20 up for destruction to Eat Strong all products, advertisements, promotional materials,
21 and signage in their possession or under their control bearing the Trademark, or any
22 simulation, reproduction, counterfeit, copy or colorable imitation thereof, and all
23 plates, molds, matrices, and other means of production of same pursuant to 15 U.S.C.
24 § 1118;

25 4. For an assessment of: (a) damages suffered by Plaintiff, trebled, pursuant
26 to 15 U.S.C. § 1117(b); or, in the alternative, (b) all illicit profits that Defendant
27 derived while using Plaintiff's Trademark, trebled, pursuant to 15 U.S.C. § 1117(b);
28 or, in the alternative, (c) statutory damages, awarded to Plaintiff pursuant to 15 U.S.C.

1 § 1117(c), of up to \$2,000,000 for each trademark that Defendant has counterfeited
2 and/or infringed, as well as attorneys' fees and costs; and (d) an award of Plaintiff's
3 costs and attorneys' fees to the full extent provided for by Section 35 of the Lanham
4 Act, 15 U.S.C. § 1117; and (e) punitive damages to the full extent available under the
5 law;

6 5. For interest as provided by law; and

7 6. For costs of suit, and for such other and further relief as the Court shall
8 deem appropriate.

9
10 Dated: October 4, 2023

/s/Amanda R. Washton

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Attorneys for Plaintiff Eat Strong, LLC

JURY DEMAND

Plaintiff requests trial by jury of all the issues in this matter.

Dated: October 4, 2023

/s/Amanda R. Washton

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